

ESTTA Tracking number: **ESTTA507243**

Filing date: **11/21/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Hershey Chocolate & Confectionery Corporation
Granted to Date of previous extension	11/21/2012
Address	4860 Robb Street, Suite 204 Wheat Ridge, CO 80033 UNITED STATES
Correspondence information	John P. Rynkiewicz Kaye Scholer LLP 901 Fifteenth Street, NW Suite 700 Washington, DC 20005 UNITED STATES jrynkiewicz@kayescholer.com, pllewellyn@kayescholer.com, jeischeid@kayescholer.com Phone: 2026823671

Applicant Information

Application No	85271772	Publication date	07/24/2012
Opposition Filing Date	11/21/2012	Opposition Period Ends	11/21/2012
Applicant	Wiesen, Kenneth 36 Farmstead Lanr Brookville, NY 11545 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. All goods and services in the class are opposed, namely: Candy; Candy bars; Candy with caramel
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	85253466	Application Date	02/28/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	POWER HOUSE		

Design Mark	POWER HOUSE
Description of Mark	NONE
Goods/Services	Class 030. First use: CHOCOLATE BARS

Attachments	85253466#TMSN.jpeg (1 page)(bytes) PowerHouseOpp.pdf (5 pages)(165022 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/john p rynkiewicz/
Name	John P. Rynkiewicz
Date	11/21/2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Application Serial No: 85271772
Filed: March 20, 2011
Published for Opposition: July 24, 2012
Mark: PowerHouse

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HERSHEY CHOCOLATE & CONFECTIONERY	:
CORPORATION,	:
Opposer,	:
v.	:
KENNETH WIESEN,	:
Applicant.	:
-----	X

Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Hershey Chocolate & Confectionery Corporation, a Delaware corporation located and doing business at 4860 Robb Street, Suite 204, Wheat Ridge, Colorado (“Hershey” or “Opposer”), as exclusive licensee, believes that it will be damaged by the registration of the mark “PowerHouse” shown in Application Ser. No. 85271772, and hereby oppose the same.

As grounds for opposition, Opposer, by and through its undersigned counsel, alleges that:

Procedural Background of Application Ser. No. 85271772

1. After publication of Applicant’s subject application, Serial No. 85271772, Opposer submitted a letter of protest dated August 21, 2012 (the “Letter of Protest”) with respect to the application. The Letter of Protest noted that the Applicant’s later-filed virtually identical mark “PowerHouse” was erroneously passed on to Publication despite the fact that the

Examining Attorney of record had previously referenced prior-filed application Ser. No. 85253466 for POWER HOUSE, covering highly similar goods, as a potential Section 2(d) refusal.

2. Opposer's Letter of Protest was granted on September 6, 2012, and jurisdiction was restored to the Examining Attorney, who, in turn, in an Office Action dated September 13, 2012, suspended further action on application Ser. No. 85271772 pending the outcome of prior-filed application Ser. No. 85253466 for POWER HOUSE. In line with TBMP Section 215, and in an abundance of caution, Opposer is filing the instant Notice of Opposition to application Ser. No. 85271772. Opposer respectfully submits that since application Ser. No. 85271772 was restored to pendency and is suspended, that this Opposition should be instituted and then suspended pending a final determination in application Ser. No. 85271772.

Grounds for Opposition

3. Opposer is the exclusive licensee of the POWER HOUSE trademark identified in application Ser. No. 85253466, owned by Cadbury Ireland Limited, and Opposer is the owner of a number of trademarks for candy, chocolate, confectionery, cocoa and related products, manufactured by its licensee, Hershey Company, a leading snack food company and one of the largest North American manufacturers of quality chocolate and non-chocolate confectionery products.

4. Prior-filed application Ser. No. 85253466 for POWER HOUSE has a prior constructive first date, contingent upon registration, and, therefore, has priority over the Applicant's later filed intent-to-use application Ser. No. 85271772.

5. Despite application Ser. No. 85253466 having a prior filing date and prior constructive use date, Applicant, with both constructive and actual notice of the prior-filed

POWER HOUSE application, adopted and filed an application for registration of the mark “PowerHouse” for “Candy; candy bars; candy with caramel” in International Class 30.

6. Applicant’s “PowerHouse” mark is highly similar to the mark POWER HOUSE in application Ser. No. 85253466, and proposed to be used by Opposer, the exclusive licensee, for “chocolate bars.”

7. Applicant’s goods, as described in its application opposed herein, are or would be offered through the same or similar channels of trade to the same or similar customers or users as those goods to be rendered by Opposer under the mark POWER HOUSE, and are highly related to the recited goods in application Ser. No. 85253466 for POWER HOUSE.

8. Opposer believes and therefore alleges that later-filed application Ser. No. 85271772 for “PowerHouse” should not proceed ahead of Opposer’s exclusively licensed mark for POWER HOUSE in Ser. No. 85253466 which was filed earlier than, and with a constructive first use date, prior to the Applicant.

9. Opposer further believes and alleges that use and registration of the mark covered by Application Serial No. 85271772 will damage Opposer, for the following reasons among others:

- a. that customers and purchasers of the respective goods would be confused, mistaken, or deceived as to the source and origin of Applicant’s goods rendered under the applied-for mark; and
- b. that customers and purchasers of the respective goods will assume, contrary to fact, that Applicant’s goods come from, are associated with, sponsored by, approved by, or otherwise related to or affiliated with Opposer. Applicant’s applied-for mark so resembles POWER HOUSE in

prior-filed application Ser. No. 85253466, as to be likely, when applied to the goods set forth in Applicant's application, to cause confusion, mistake or deception within the meaning of 15 U.S.C. § 1052(d).

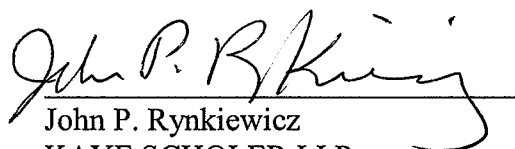
10. Applicant's applied-for mark so resembles Opposer's exclusively licensed and the prior-filed application having a prior constructive first use date, as to be likely, when applied to the goods set forth in Applicant's application, to falsely suggest a connection with Opposer within the meaning of 15 U.S.C. § 1052(a).

WHEREFORE, Opposer respectfully prays that this Opposition be sustained and that registration to Applicant be refused.

The U.S. Patent and Trademark Office and Trademark Trial and Appeal Board are hereby authorized to collect any fees necessitated by this Notice of Opposition from the deposit account of Opposer's attorneys, Kaye Scholer LLP, Deposit Account No. 11-0228.

Dated: November 21, 2012

Respectfully submitted,



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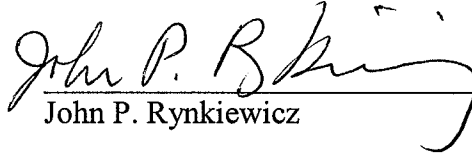
*Attorneys for Opposer Hershey Chocolate &
Confectionery Corporation*

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing NOTICE OF OPPOSITION has been

served this 21st day of November 2012, by first-class mail, postage prepaid to:

KENNETH WIESEN
36 FARMSTEAD LN.
BROOKVILLE, NEW YORK 11545


John P. Rynkiewicz